

VA



U.S. Department of Veterans Affairs
Office of General Counsel

Torts Law Group
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In Reply Refer To: GCL 351356

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Via Certified Mail

May 14, 2020

Tom Jacob
National Trial Law
7500 Rialto Blvd; Bldg. 2 Ste 250
Austin, TX 78735

Re: **Administrative Tort Claim – Tommy Byrd**

Dear Mr. Jacob:

The Department of Veterans Affairs (VA) has thoroughly investigated the facts and circumstances surrounding Tommy Byrd's administrative tort claim. Our adjudication of the claim included a review of the medical records and a review of the claim by medical reviewers who were not involved in Mr. Byrd's care.

The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b) and 2671-2680, under which you filed the claim, provides for monetary compensation when a Government employee, acting within the scope of employment, injures another by a negligent or wrongful act or omission. Medical negligence means there was a breach in the standard of care and that breach proximately caused an injury. The standard of care is the level at which similarly qualified medical professionals would have managed the care under the same or similar circumstances.

Our review concluded there was no negligent or wrongful act on the part of an employee of the Department of Veterans Affairs (VA) acting within the scope of employment that caused compensable harm. Accordingly, we deny the claim.

If you are dissatisfied with the denial of the claim, you may file suit directly under the FTCA, 28 U.S.C. §§ 1346(b) and 2671-2680. The FTCA provides that when an agency denies an administrative tort claim, the claimant may seek judicial relief in a Federal district court. The claimant must initiate the suit within six months of the mailing of this notice as shown by the date of this denial (28 U.S.C. § 2401(b)). In any lawsuit, the proper party defendant is the United States, not the Department of Veterans Affairs.

Please note that FTCA claims are governed by a combination of Federal and state laws. Some state laws may limit or bar a claim or lawsuit. VA attorneys handling FTCA

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claims work for the Federal government and cannot provide advice regarding the impact of state laws or state filing requirements.

Sincerely,

Kristen Nelson

Kristen Nelson
Deputy Chief Counsel